Supreme Court of Florida

TUESDAY, MARCH 14, 2000

CASE NO.: SC00-449
Lower Tribunal No.: 5D99-531

EDUARDO A. CORREDOR vs. FL. DEPT. OF HWY. SAFETY AND MOTOR VEHICLES

Petitioner(s) Respondent(s)

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed.

No motion for rehearing will be entertained by the Court.

A True Copy
Test:

S/Debbie Causseaux
Debbie Causseaux
Acting Clerk, Supreme Court

Supreme Court of the
State of Florida (seal)

bhp
Served:

Hon. Frank J. Habershaw, Clerk
Eduardo A. Corredor
Heather R. Cramer
Hon. Diane M. Matousek, Clerk

Supreme Court of Florida

MONDAY, APRIL 17, 2000

CASE NO.: SC00-449
Lower Tribunal No.: 5D99-531

EDUARDO A. CORREDOR	vs.	FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
Petitioner(s)		Respondent(s)

Pursuant to this Court's order dated March 14, 2000, the Motion for Rehearing and Clarification is hereby stricken as unauthorized.

A True Copy
Test:

S/Debbie Causseaux
Debbie Causseaux
Acting Clerk, Supreme Court

Supreme Court of the
State of Florida (seal)

bhp
Served:

HON. FRANK J. HABERSHAW, CLERK
HON. DIANE M. MATOUSEK, CLERK
EDUARDO A. CORREDOR
HEATHER R. CRAMER

Supreme Court of Florida

FRIDAY, MAY 12, 2000

CASE NO.: SC00-449
Lower Tribunal No.: 5D99-531

EDUARDO A. CORREDOR vs. FL. DEPT. OF HWY. SAFETY AND MOTOR VEHICLES

Petitioner(s) Respondent(s)

Petitioner's Motion For Reconsideration And Clarification Of This Courts' Order To Have Stricken As Unauthorized Petitioners Motion For Rehearing is hereby stricken and no further pleadings may be filed in this case.

A True Copy
Test:

S/Thomas D. Hall
Thomas D. Hall
Clerk, Supreme Court

Supreme Court of the
State of Florida (seal)

bm
Served:

EDUARDO A. CORREDOR
HEATHER R. CRAMER

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

EDUARDO A. CORREDOR
Appellant,

CASE NO. 5D99-531

v.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,
Appellee.

_____/

DATE: January 25, 2000

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION TO AMEND PAGES, filed July 15 1999, is granted. Appellant's MOTION TO STRIKE MOTION TO STRIKE, filed November 12, 1999, and Appellant's Second and Third MOTIONS FOR RECONSIDERATION TO STRIKE MOTION RESPONSE/ ANSWER BRIEF AS TIMELY FILED, filed November 12, 1999, and January 10, 2000, are denied. Appellee's MOTION TO STRIKE, filed October 27, 1999, is granted. Moreover, pursuant to Florida Rule of Appellate Procedure 9.040(c) it is

ORDERED that the Notice of Appeal filed March 1, 1999, below is treated as a Petition For Writ Of Certiorari to review the Feburay 3, 1999, Order of the Circuit Court for Volusia County, Florida, denying certiorari review of the final DMV administrative order. Further, the Petition ForWrit Of Certiorari is denied. Upon consideration hereof, it is

ORDERED that Appellant's MOTIONS TO AMEND PRAYER, filed July 12, 1999, and July 15, 1999, are moot.

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA (seal)

I hereby certify that the foregoing is
a true copy of the original Court order.
S/ Frank J. Habershaw
FRANK J. HABERSHAW, CLERK

I hereby certify that the above and foregoing is a true copy of instrument filed in my office.
FRANK J.
HABERSHAW, CLERK
DISTRICT COURT OF
APPEALFLORIDA,
FIFTH DISTRICT
S/per C. Swanger
Deputy Clerk

cc: Clerk of the Court, Volusia County (98-31699-CICI)
Heather Cramer, Esq.
Eduardo Corredor

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

EDUARDO A. CORREDOR
Appellant,

CASE NO. 5D99-531

v.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,
Appellee.

_____/

DATE: February 18, 2000

BY ORDER OF THE COURT:

ORDERED that Appellant's untimely MOTION FOR REHEARING, and Appellant's untimely MOTION FOR CLARIFICATION AND REQUEST FOR OPINION, filed February 10, 2000, are denied

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA (seal)

I hereby certify that the foregoing is
a true copy of the original Court order.
S/ Frank J. Habershaw
FRANK J. HABERSHAW, CLERK

cc: Eduardo Corredor
Heather Rose Cramer, Esq.

IN THE CIRCUIT COURT OF
THE SEVENTH JUDICIAL
CIRCUIT IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO.: 98-31669-CICI

IN RE: Writ of Certiorari

EDUARDO A. CORREDOR

Petitioner / Appellant,

and

STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent / Appellee

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that petitioner / appellant, Eduardo A. Corredor, appeals to the Fifth District Court of Appeal, the order rendered on or about February 3, 1999. The nature or the order is denying this Petitioner's driving privileges in the State of Florida, based on the oversight of the State of Florida's, Department of Motor Vehicles, Drivers Licenses Bureau formal hearing officer to investigate the inaccurate allegations in the police report. The Department of Motor Vehicles relied solely on the misrepresented evidence supplied by the arresting officer in the form of a written report, the DMV hearing officer did not take into account the evidence provided by this Petitioner. This petitioner did provide to the DMV hearing officer all pertinent evidence for example eyewitness testimony photographs in the form of exhibits. One interesting example that I should mention, the alleged

parking lanes as mentioned in the police report which are suppose to exist on the corner of Ridgewood and Connecticut but in reality these parking lanes are non existent, (see Exhibits).

Officer Bruckner's report is misleading in nature, one example is the above mentioned parking lanes in which this petitioner supposed to have driven over these do not exist. The lack of a fair and impartial hearing by the Department of Motor Vehicle's has pierced the vail of trust that the public has endowed on these officials, instead it has created an undue and unjust hardship on this petitioner.

The failure of the lower court to review all the pertinent facts has inhibited the ability of said lower court to rule justly during the review for certiorari, and has allowed the injustice to persist and move through another level in the judicial system.

The testimony of officer Bruckner during the D.U.I. trial was impeached due to the false accounts of officer Bruckner's report. The truth is officer Bruckner was on a training mission that evening and needed a subject for his experiment and unjustly picked this petitioner as the subject for his training, the juror's were able to hear the testimony of Bruckner and found it to be inaccurate and less than truthful and conflicting with the testimony of the other police officer that was riding in the patrol car at the time of this petitioner's arrest.

The Department of Motor Vehicles has been relying on officer Bruckner's less than truthful allegations, the DMV ruling was based on a police report without the benefit of the police officer as a witness to rebut testimony or evidence presented at the DMV formal hearing instead this petitioner did rebut the police officer's inconsistent and inaccurate allegations as it was plainly obvious during the DMV hearing, but the hearing officer Strickland disregarded all the logical and truthful evidence and ruled

against this petitioner. Undoubtedly this is not an isolated incident but a recurrent one this petitioner believes that the agency was unfair and unjust during the hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the State of Florida Department of Highway Safety and Motor Vehicle, in care of Heather Rose Cramer, Esquire 2330 S. Congress Ave. Suite 2-G West Palm Beach, Florida 33406 Telephone (516) 443-3645. This _____day of February, 1999.

S/Eduardo A. Corredor
EDUARDO A. CORREDOR
P.O. Box 10582
Daytona Beach, Florida 32120
(904) 767-4474

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

Case No.: 98-31699 CICI
Division: 30

EDUARDO ALVARO CORREDOR

Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, BUREAU OF DRIVER IMPROVEMENT,

Respondent.
_____/

(seal) Department of Highway Safety and Motor Vehicles
Feb 8, 1999
Legal Office
West Palm Beach

AMENDED ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, EDUARDO ALVARO CORREDOR, seeks certiorari review of a final administrative order upholding the suspension of his driver's license for failing to submit to a breath, urine or blood test when asked to do so by a law enforcement officer after his arrest for driving under the influence, in violation of section 316.193, Florida Statutes. Florida's implied consent law requires the suspension of an individual's driving privilege if he refuses to submit to a breath, urine, or blood test after being arrested for a violation of section 316.193, Florida Statutes. See §322.2615, Fla. Stat. The suspension of Petitioner's driver's license was upheld following a formal review hearing conducted by a hearing officer of the Florida Department of Highway Safety and Motor Vehicles (hereinafter DMV). See §322.2615 (6)-(8), Fla. Stat. Petitioner timely

filed his petition for writ of certiorari review of the DMV's decision in thes Court on August 5, 1998. See §322.2615(13) Fla. Stat.

I. FACTUAL AND PROCEDURAL BACKGROUND

The record of the proceedings before the hearing officer for the DMV reflects that on June 17, 1998 at 3:35 a.m., Officer Bruckner of the Daytona Beach Police Department observed Petitioner make a wide turn and drive into the parking lane of the roadway. The officer turned his patrol vehicle around and followed Petitioner as he continued at a quick rate of speed. The officer's speed was in excess of 65 mph as he attempted to pull up behind petitioner. At an intersection, the officer observed him suddenly turn right from the wrong lane. He stopped him and upon contact detected an odor of alcohol on Petitioner's breath. He also noticed that Petitioner's eyes were bloodshot.

Petitioner was asked to take a Field Sobriety Test, to which he complied. On the Walk and Turn test, he started before instructions were complete, did not walk heel to toe, turned incorrectly, and used his arms for balance. On the Leg Stand, he used his arms for balance and put his foot down twice. He did not follow instructions on the Finger to Nose test and missed the tip of his nose. As a result, he was arrested for DUI and was transported to the Daytona Beach Police Department for processing. On video, Petitioner was advised of Implied Consent, and he refused to submit to take a breath test. He also was given citations for improper change of lane and failure to accept and sign summons.

Petitioner testified at the hearing and the hearing officer did not find it to be persuasive. A witness, Lonnie Mandorina, testified with regards to the amount of alcohol consumed by Petitioner, and to the fact that Petitioner's eyes are always bloodshot. The hearing officer determined that although Petitioner's eyes may be chronically bloodshot,

when coupled with the smell of alcohol, the police officer's further investigation into DUI was justified.

Following the July 24, 1998 hearing, the hearing officer found that Petitioner's license was properly suspended for one year for refusal to submit to breath, urine, or blood test. Specifically, the hearing officer made the following conclusions: (1) that the arresting law enforcement officer did have probable cause to believe that Petitioner was driving or in actual control of a motor vehicle in this state while under the influence of alcohol beverages or controlled substances; (2) that Petitioner was lawfully arrested for DUI; (3) that Petitioner refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer; and (4) that Petitioner was told that if he refused to submit to such test, his privilege to operate a motor vehicle would be suspended for a period of one year, or in the case of a second or subsequent refusal, for a period of 18 months. On August 5, 1998, Petitioner filed his petition for writ of certiorari.

II. STANDARD OF REVIEW

In reviewing a hearing officer's decision to uphold the suspension of an individual's driving privileges for driving under the influence in violation of §316.193, the Court is limited to the following considerations: (1) whether procedural due process was accorded the motorist; (2) whether the hearing officer departed from the essential requirements of law; and (3) whether the administrative findings and judgment were supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982); Dept. of Highway Safety and Motor Vehicles v. Satter, 643 So. 2d 692, 695 (Fla. 5th DCA 1994), rev'd by (Fla. 1995).

III. CONCLUSIONS OF LAW

THE HEARING OFFICER MADE A PROPER DETERMINATION THAT THE STATE ESTABLISHED BY

COMPETENT SUBSTANTIAL EVIDENCE THAT POLICE LAWFULLY INITIATED THE TRAFFIC STOP

Petitioner claims that the arrest report did not have sufficient facts to support the hearing officer's finding that the traffic stop was lawful. Reasonable suspicion standard, rather than probable cause, is applicable to a traffic stop. State, Department of Highway Safety and Motor Vehicles v. DeShong, 603 So.2d 1349 (Fla. 2d DCA 1992). A patrolman may stop a vehicle to determine the reason for its "unusual operation," because of the "dangers inherent to our vehicular mode of life." Id. At 1349. (quoting Bailey v. State, 319 So.2d 22, 26 (Fla. 1975)). Officer Bruckner stated in his arrest report that he was concerned over Petitioner's "driving ability." (PA.C-3). Officer Bruckner stated in his arrest report that he was concerned over Petitioner's "driving ability." (PA.C-3). The arrest report also stated that the officer turned his patrol vehicle around and followed Petitioner as he continued at a quick rated of speed. The officer's speed was in excess of 65 mph as he attempted to pull up behind Petitioner. Applying both DeShong and Bailey, Officer Bruckner's sworn arrest affidavit meets the reasonable suspicion standard, and his concern over Petitioner's "driving ability" justified his observation of Petitioner's vehicle for its unusual operation. (PA.C-3).

In his arrest report, Officer Bruckner stated that Petitioner was stopped at a red light at an intersection, and then turned right from the "outside lane," and that this was the "wrong lane." (PA. C-3). Petitioner alleges that the phrase "outside lane" is ambiguous, and that if he was in the outermost lane when he made the turn, then he was not in violation of the statute. (PA. C-3). Petitioner's argument is denied, pursuant to State, Department of Highway Safety and Motor Vehicles v. DeShong, 603 So.2d 1349 (Fla. 2d DCA 1992). Here, the court held that "driving

behavior need not reach the level of a traffic violation in order to justify a stop for driving while under the influence." Id. At 1352. (citing State v. Carillo, 506 So.2d 495 (Fla. 5th DCA 1987) and, Esteen v. State, 503 So.2d 356 (Fla. 5th DCA 1987)). The statement in the arrest report that the turn was made from the "wrong lane" is competent evidence upon which the hearing officer could properly rely on to support her decision that Petitioner was lawfully stopped. (PA.C-3). As a result, the hearing officer properly denied Petitioner's argument.

Accordingly, based on the foregoing, it is ,

ORDERED AND ADJUDGED that Petitioner's petition for writ of certiorari is DENIED.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida, this 5th day of February, 1999.

S/ R. K. Rouse Jr
ROBERT K. ROUSE, JR.
CIRCUIT COURT JUDGE

cc: Dan D. Hallenberg, Esq., Attorney for Petitioner
Heather Rose Cramer, Assistant General Counsel, Department of Highway Safety and Motor Vehicles

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

Case No.: 98-31699 CICI
Division: 30

EDWARD ALVARO CORREDOR,

Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, BUREAU OF DRIVER IMPROVEMENT,

Respondent.
_____/

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, EDUARDO ALVARO CORREDOR, seeks certiorari review of a final administrative order upholding the suspension of his driver's license for failing to submit to a breath, urine or blood test when asked to do so by a law enforcement officer after his arrest for driving under the influence, in violation of section 316.193, Florida Statutes. Florida's implied consent law requires the suspension of an individual's driving privilege if he refuses to submit to a breath, urine, or blood test after being arrested for a violation of section 316.193, Florida Statutes. See §322.2615, Fla. Stat. The suspension of Petitioner's driver's license was upheld following a formal review hearing conducted by a hearing officer of the Florida Department of Highway Safety and Motor Vehicles (hereinafter DMV). See §322.2615 (6)-(8), Fla. Stat. Petitioner timely filed his petition for writ of certiorari review of the DMV's decision in this Court on August 5, 1998. See §322.2615(13) Fla. Stat.

(stamp) FEB 5 1999

II. FACTUAL AND PROCEDURAL BACKGROUND

The record of the proceedings before the hearing officer for the DMV reflects that on June 17, 1998 at 3:35 a.m., Officer Bruckner of the Daytona Beach Police Department observed Petitioner make a wide turn and drive into the parking lane of the roadway. The officer turned his patrol vehicle around and followed Petitioner as he continued at a quick rate of speed. The officer's speed was in excess of 65 mph as he attempted to pull up behind petitioner. At an intersection, the officer observed him suddenly turn right from the wrong lane. He stopped him and upon contact detected an odor of alcohol on Petitioner's breath. He also noticed that Petitioner's eyes were bloodshot.

Petitioner was asked to take a Field Sobriety Test, to which he complied. On the Walk and Turn test, he started before instructions were complete, did not walk heel to toe, turned incorrectly, and used his arms for balance. On the Leg Stand, he used his arms for balance and put his foot down twice. He did not follow instructions on the Finger to Nose test and missed the tip of his nose. As a result, he was arrested for DUI and was transported to the Daytona Beach Police Department for processing. On video, Petitioner was advised of Implied Consent, and he refused to submit to take a breath test. He also was given citations for improper change of lane and failure to accept and sign summons.

Petitioner testified at the hearing and the hearing officer did not find it to be persuasive. A witness, Lonnie Mandorina, testified with regards to the amount of alcohol consumed by Petitioner, and to the fact that Petitioner's eyes are always bloodshot. The hearing officer determined that although Petitioner's eyes may be chronically bloodshot, when coupled with the smell of alcohol, the police officer's further investigation into DUI was justified.

Following the July 24, 1998 hearing, the hearing officer found that Petitioner's license was properly suspended for one year for refusal to submit to breath, urine, or blood test. Specifically, the hearing officer made the following conclusions: (1) that the arresting law enforcement officer did have probable cause to believe that Petitioner was driving or in actual control of a motor vehicle in this state while under the influence of alcohol beverages or controlled substances; (2) that Petitioner was lawfully arrested for DUI; (3) that Petitioner refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer; and (4) that Petitioner was told that if he refused to submit to such test, his privilege to operate a motor vehicle would be suspended for a period of one year, or in the case of a second or subsequent refusal, for a period of 18 months. On August 5, 1998, Petitioner filed his petition for writ of certiorari.

II. STANDARD OF REVIEW

In reviewing a hearing officer's decision to uphold the suspension of an individual's driving privileges for driving under the influence in violation of §316.193, the Court is limited to the following considerations: (1) whether procedural due process was accorded the motorist; (2) whether the hearing officer departed from the essential requirements of law; and (3) whether the administrative findings and judgment were supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982); Dept. of Highway Safety and Motor Vehicles v. Satter, 643 So. 2d 692, 695 (Fla. 5th DCA 1994), rev'd by (Fla. 1995).

III. CONCLUSIONS OF LAW

THE HEARING OFFICER MADE A PROPER DETERMINATION THAT THE STATE ESTABLISHED BY COMPETENT SUBSTANTIAL EVIDENCE THAT POLICE LAWFULLY INITIATED THE TRAFFIC STOP

Petitioner claims that the arrest report did not have sufficient facts to support the hearing officer's finding that the traffic stop was lawful. Reasonable suspicion standard, rather than probable cause, is applicable to a traffic stop. State, Department of Highway Safety and Motor Vehicles v. DeShong, 603 So.2d 1349 (Fla. 2d DCA 1992). A patrolman may stop a vehicle to determine the reason for its "unusual operation," because of the "dangers inherent to our vehicular mode of life." Id. At 1349. (quoting Bailey v. State, 319 So.2d 22, 26 (Fla. 1975)). Officer Bruckner stated in his arrest report that he was concerned over Petitioner's "driving ability." (PA.C-3). The arrest report also stated that the officer turned his patrol vehicle around and followed Petitioner as he continued at a quick rated of speed. The officer's speed was in excess of 65 mph as he attempted to pull up behind Petitioner. Applying both DeShong and Bailey, Officer Bruckner's sworn arrest affidavit meets the reasonable suspicion standard, and his concern over Petitioner's "driving ability" justified his observation of Petitioner's vehicle for its unusual operation. (PA.C-3).

In his arrest report, Officer Bruckner stated that Petitioner was stopped at a red light at an intersection, and then turned right from the "outside lane," and that this was the "wrong lane." (PA. C-3). Petitioner alleges that the phrase "outside lane" is ambiguous, and that if he was in the outermost lane when he made the turn, then he was not in violation of the statute. (PA. C-3). Petitioner's argument is denied, pursuant to State, Department of Highway Safety and Motor Vehicles v. DeShong, 603 So.2d 1349 (Fla. 2d DCA 1992). Here, the court held that "driving behavior need not reach the level of a traffic violation in order to justify a stop for driving while under the influence." Id. At 1352. (citing State v. Carillo, 506 So.2d 495 (Fla. 5th DCA 1987) and Esteen v. State, 503 So.2d 356 (Fla. 5th DCA 1987)). The statement in the arrest report that the turn

was made from the "wrong lane" is competent evidence upon which the hearing officer could properly rely on to support her decision that Petitioner was lawfully stopped. (PA.C-3). As a result, the hearing officer properly denied Petitioner's argument.

Accordingly, based on the foregoing, it is ,

ORDERED AND ADJUDGED that Petitioner's petition for writ of certiorari is DENIED.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida, this 3rd day of February, 1999.

S/ R. K. Rouse Jr
ROBERT K. ROUSE, JR.
CIRCUIT COURT JUDGE

cc: Dan D. Hallenberg, Esq., Attorney for Petitioner
Heather Rose Cramer, Assistant General Counsel, Department of Highway Safety and Motor Vehicles

FINAL ORDER OF LICENSE SUSPENSION

STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
DIVISION OF DRIVER LICENSES
BUREAU OF ADMINISTRATIVE REVIEWS
995 ORANGE AVENUE
DAYTONA BEACH, FLORIDA 32114-4663

Eduardo Alvaro Corredor
c/o Dan D. Hallenberg, Esquire
220 South Ridgewood Avenue, Suite 210
Daytona Beach, Florida 32114

C636-201-57-328-0

After carefully considering all evidence received at the formal review, pertaining to the suspension of your driving privilege (pursuant to s.322.2615, F.S.) for refusal to submit to a breath, blood or urine test, the hearing officer finds as follows:

FINDINGS OF FACT

On June 17,1998 at 3:35 a.m., Officer Bruckner of the Daytona Beach Police Department observed Eduardo Alvaro Corredor make a wide turn and drive into the parking lane of the roadway while driving on Ridgewood Avenue. Officer Bruckner turned his patrol vehicle around and followed Mr. Corredor as he continued driving on Ridgewood at a quick rate of speed. Officer Bruckner's speed was in excess of 65 mph as he attempted to pull up behind Mr. Corredor. At the intersection of Ridgewood and International Speedway Boulevard, Officer Bruckner observed Mr. Corredor suddenly turn right from the wrong lane. Officer Bruckner stopped Mr. Corredor and upon contact detected an odor of alcohol on Mr. Corredor's breath and noticed that Mr. Corredor's eyes were bloodshot.

Mr. Corredor was asked to perform a Field Sobriety Test and he agreed. On the Walk and Turn test, Mr. Corredor started before instructions were

(stamp) RECEIVED JUL 27 1998

complete, did not walk heel to toe, turned incorrectly and used his arms for balance. On the One Leg Stand, Mr. Corredor used his arms for balance and put his foot down twice. Mr. Corredor did not follow instructions on the Finger to Nose test and missed the tip of his nose.

Mr. Corredor was arrested for DUI, and transported to the Daytona Beach Police Department for processing. On video, Mr. Corredor was advised of Implied Consent and refused to submit to a breath test. In addition to a charge of DUI, Mr. Corredor was given citations for improper change of lane (turned right from wrong lane), and failure to accept and sign summons.

Mr. Corredor testified at the hearing and his testimony was considered by this Hearing Officer however not found to be persuasive. Lonnie Mandorina testified at the hearing with regards to the amount of alcohol consumed by Mr. Corredor and to the fact that Mr. Corredor's eyes are always bloodshot. I find that although Mr. Corredor's eyes may be chronically bloodshot, when coupled with the smell of alcohol, Officer Bruckner's further investigation into DUI was warranted. Therefore I find Mr. Corredor's privilege to drive appropriately suspended for refusal to submit to breath, urine or blood test.

Motions to Invalidate: 1. The evidence fails to show a lawful traffic stop, based on testimony and evidence submitted by the Officer. It is clear the Officer initiated the stop for an improper turn, however the Officer states the defendant was in the outside lane so clearly not a violation. No evidence that the defendant was not as close as practicable to make a turn. Garnet Crooks vs. State of Florida, and Florida Statute 316.151 submitted. Denied.
2. To invalidate for lack of evidence that the Defendant was driving under the influence. Testimony was given that the defendant did not even have one beer and that his eyes are bloodshot even today. Denied.

CONCLUSIONS OF LAW AND FACT

1. Whether the arresting law enforcement officer had probable cause to believe that you were driving or in actual physical control of a motor vehicle or in the case of a disqualification a commercial motor vehicle, in this state while under the influence of alcoholic beverages or controlled substances;
2. Whether you were lawfully arrested for DUI;

3. Whether you refused to submit to a blood, breath or urine test after being requested to do so by a law enforcement officer or correctional officer;
4. Whether you were told that if you refused to submit to such test your privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

Based upon the above findings of fact and the conclusions of law, the hearing officer concludes that your driving privilege was properly suspended and is sustained effective July 28, 1998. Your suspension is for a period of one year effective June 17, 1998 to expire June 16, 1999. Florida law requires that you surrender all driver licenses. If you have a license in your possession, please mail it to the address listed above.

Pursuant to s.322.2615 F.S., you may apply for a hardship license on or after October 27, 1998 by requesting an administrative hearing at any driver license office.

Appeal of your suspension may be initiated by filing a petition for writ of certiorari to the circuit court within 30 calendar days of this order by following the procedure specified in s/ 322.31, F.S.

This decision of the Department Hearing Officer has no bearing on any DUI trial. If you are convicted of a DUI charge in court, your driving privilege will be revoked according to Florida law. You will be required to surrender to the court any driver's license in your possession at that time.

Ordered this 24th day of July, 1998.

S/D. Strickland
D, Strickland, Hearing Officer
Bureau of Administrative
Reviews

HSMV 72060-A (Rev. 01/98)